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**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE**

**Attorney General Opinion No. 19-IB20**

**April 15, 2019**

**VIA EMAIL**

Mr. John Wells  
[Jwells8@aol.com](mailto:Jwells8@aol.com)

**RE: FOIA Petition Regarding the Delaware Auditor of Accounts**

Dear Mr. Wells:

We write in response to your correspondence alleging that the Delaware Auditor of Accounts ("AOA") violated the public records provisions of Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA") in connection with your February 5, 2019 request for records. We treat your correspondence as a Petition for a determination pursuant to 29 *Del. C.* §10005 regarding whether a violation of FOIA has occurred or is about to occur. As discussed more fully herein, we determine that this Petition is moot, as AOA has since provided you with a response to your FOIA request.

**BACKGROUND**

On February 28, 2019, you sent a FOIA request to AOA for "copies of all audit reports conducted as required by De. Code, Title 29, Chapter 29 as reference[d] above, excluding major capital improvement funds, that were conducted in fiscal year 2018."<sup>1</sup> If no such audits were available, you requested "audits conducted in fiscal year 2017, excluding major capital improvement funds."<sup>2</sup> On March 26, 2019, you filed this Petition, noting that you had not received

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<sup>1</sup> Petition.

<sup>2</sup> *Id.*

any reply to your FOIA request and requesting “action be taken to require the Auditor of Accounts FOIA Coordinator to provide me the information requested.”<sup>3</sup> AOA’s counsel replied to your Petition by letter (“Response”) on April 1, 2019, providing a copy of the response to the FOIA request sent to you the same date. AOA’s response to your request included an apology for the delay and gave a link to the report responsive to this request, the Fiscal Year 2017 Comprehensive Annual Financial Report. The Response noted that the delay resulted from a transition to a new FOIA Coordinator and now that you have the responsive document, asked that your Petition be dismissed as moot.

You submitted an email in reply on April 2, 2019 (“Reply”). Due to the lengthiness of the report, you stated you have been “unable to identify any audits of local school district [sic] tax funds budget and expenditures required to be conducted annually. . . [and] . . . unable to identify audits that verify all expenditures have been legal and proper and made only for the purposes contemplated in the funding acts of other pertinent regulations.”<sup>4</sup> As a result, you request “DOJ FOIA Coordinator direct Auditor of Accounts FOIA Coordinator to provide me the page numbers where in the State of Delaware’s Comprehensive Annual Financial Report where the audits I request can be located.”<sup>5</sup>

### DISCUSSION

FOIA requires a public body to respond to a records request as soon as possible but no later than fifteen business days or if more time is needed, to provide a statutorily-acceptable reason for the delay and a good faith estimate of the amount of time needed to respond.<sup>6</sup> You sent a records request to AOA on February 28, 2019. On April 1, 2019, AOA provided a final response to your FOIA request and provided the responsive document. Other than communications related to this Petition, no other communications are alleged to have occurred between the parties during that time period.<sup>7</sup> Based on this record, it is my determination that your Petition is now moot, as AOA has completed its response to your FOIA request.<sup>8</sup> The new claim in your Reply requesting

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<sup>3</sup> *Id.*

<sup>4</sup> Reply.

<sup>5</sup> *Id.*

<sup>6</sup> 29 Del. C. § 10003.

<sup>7</sup> We note that the record does not reflect, nor does the Petition allege, that AOA acted in bad faith or engaged in a pattern of noncompliance.

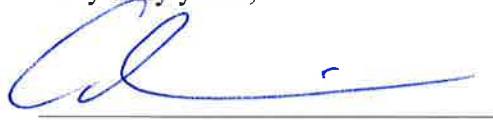
<sup>8</sup> See, e.g., *Flowers v. Office of the Governor*, 167 A.3d 530, 546 (Del. Super. 2017) (“[T]he Court finds that any claimed violation regarding the Sample E-mails is moot because Appellants already possess them.”); *Chem. Indus. Council of Del., Inc. v. State Coastal Zone Indus. Bd.*, 1994 WL 274295, at \*13 (Del. Ch. May 19, 1994) (“Because the documents that are the subject of [plaintiffs’] FOIA requests were turned over to the plaintiffs on August 13, 1993, that claim is

identification of page numbers within the response is not presented as a part of this Petition.<sup>9</sup> However, we note that FOIA does not require a public body to provide answers to questions.<sup>10</sup>

### CONCLUSION

For the reasons set forth above, we determine that the Petition is moot.

Very truly yours,



Aaron R. Goldstein  
Chief Deputy Attorney General

cc: Frank N. Broujos, Deputy Attorney General  
Dorey L. Cole, Deputy Attorney General

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moot.”); *Del. Op. Att’y Gen.* 18-IB30, 2018 WL 3118433, \*2 (June 7, 2018) (“Based upon the record, it is my determination that your Petition is now moot, as OGov has completed its response to your FOIA request.”); *Del. Op. Att’y Gen.* 18-IB25, 2018 WL 2994703, \*1 (May 15, 2018) (“Based on the facts as presented to this Office, it is our determination that your petition is moot, as the City has provided a response to your April 11 FOIA Request.”); *Del. Op. Att’y Gen.* 17-IB35, 2017 WL 3426275, \*1, FN 3 (July 31, 2017) (citing *Library, Inc. AFG Enterprises, Inc.*, 1998 WL 474159, at \*2 (Del. Ch. July 27, 1998) (citation omitted)) (finding a challenge to the wholesale denial of a request is moot and noting that a matter “is moot when there may have been a justiciable controversy at the time a matter was commenced, but that controversy ceases to exist prior to the arbiter’s determination.”).

<sup>9</sup> Our consideration is limited to the claims raised in the Petition. *See, e.g., Del. Op. Att’y Gen.* 18-IB51, 2018 WL 6591816, at \*FN 4 (Nov. 20, 2018); *Del. Op. Att’y Gen.* 12-IIB11, 2012 WL 5894039, \*4 (Nov. 7, 2012).

<sup>10</sup> *See, e.g. Del. Op. Att’y Gen.* 17-IB05, 2017 WL 1317847, at \*3 (Mar. 10, 2017); *Del. Op. Att’y Gen.* 17-IB04, 2017 WL 1317846, at \*2 (Mar. 8, 2017); *Del. Op. Att’y Gen.* 08-IB05, 2008 WL 1727613, at \*1 (Feb. 22, 2008); *Del. Op. Att’y Gen.* 00-IB08, 2000 WL 1092967, at \*2 (May 24, 2000); *Del. Op. Att’y Gen.* 97-IB06, 1997 WL 606408, at \*5 (Mar. 17, 1997).